LIFELINE AMBULANCE SDN BHD A

v.

AMASSURANCE BHD

HIGH COURT MALAYA, KUALA LUMPUR B
KANG HWEE GEE J
[SUIT NO: D8-22-1311-2002]
1 DECEMBER 2009

INSURANCE: *Insurance policy - Motor vehicle - Claim for total loss - Delay in payment - Insurer taking eight months to settle claim - Whether contumelious delay - Whether liable to compensate insured for loss of earnings arising from delay* C

The plaintiff in this case had insured its vehicle with the defendant insurance company for RM55,000 ('the Policy'). On 5 January 2000, D the vehicle was involved in a road accident resulting in its total loss, and arising therefrom, in March 2000, the defendant offered to pay the plaintiff RM50,000. The plaintiff however rejected the offer. Subsequently, on 21 August 2000, the defendant made a second offer of RM52,500, but the offer was likewise rejected by the E plaintiff. A third offer to pay the full insured sum of RM55,000 was made by the defendant on 13 October 2000, but again, it was rejected by the plaintiff. It was the plaintiff's view, in rejecting the said full insured sum, that the defendant was guilty of wilful delay and was hence liable to compensate the plaintiff for other losses the F plaintiff had allegedly suffered. In any case, about two years later, on 21 August 2002, the plaintiff filed the present suit claiming for loss of earnings arising from the defendant's failure to settle the claim sooner.

Held (dismissing claim with costs): G

(1) The sum of RM55,000 that the defendant was prepared to pay represents the full sum insured under the Policy. This settlement sum was offered to the plaintiff even before it filed this action twenty two months later on 21 August 2002. The plaintiff should be entitled to claim this sum. (para 11) H

(2) As to the claim for loss of earnings, it is clear that the Policy is essentially a contract of indemnity which binds the defendant insurance company to indemnify the plaintiff for loss occasioned and incurred by the plaintiff only within the provision of I Section 1 Para 1 of the Policy. Going by the terms of the Section, nothing can flow from the consequence of any

contumelious delay on the part of the defendant (even if proved) to settle the plaintiff's claim. In fact, the "Exceptions to Section 1" expressly states that the company shall not be liable to pay any consequential loss. In any case, the time period of eight months expended by the defendant before offering to settle the full sum was not contumelious. (para 13)

(3) The plaintiff should pay the cost of this action to the defendant to be taxed as it is clear that, had it accepted the defendant's final offer to pay the full insured sum under the Policy *vide* its letter of 13 October 2000, it would not have been necessary for the plaintiff to file this action. (para 15)

For the plaintiff - KH Lim; M/s Lee & Lim
For the defendant - Dato' S Satharuban (S Murali with him); M/s Satha & Co

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Kang Hwee Gee J:

[1] This case was heard in full before the late Justice Abdul Wahab Said Ahmad. Later he allowed the plaintiff's application to recall a defendant's witness for further cross-examination and to introduce an additional witness to adduce further evidence. He passed away before the witnesses could be heard. Subsequently both the witnesses were examined before me.

[2] The parties are agreed that I should decide this case based on the evidence recorded by the late Abdul Wahab Said Ahmad J and further evidence adduced by the plaintiff before me.

[3] The plaintiff's claim arose from a Commercial Vehicle Policy (exh. "P1") issued by the defendant in respect of a vehicle BEU 6673 belonging to the plaintiff.

[4] The insured value is RM55,000 as stated in p. 1 of the insurance cover note (exh. "P1").

[5] Following a road accident on 5 January 2000 which resulted in the total loss of this vehicle, the plaintiff submitted a claim on the Policy on 24 February 2000. The defendant offered to pay the plaintiff RM50,000 in March 2000. The plaintiff rejected the offer. On 21 August 2000 the defendant made a second offer for

RM52,500 which the plaintiff also rejected. The defendant then made a third offer on 13 October 2000 for the full insured sum of RM55,000 which was also rejected. A

[6] The only reason why the plaintiff rejected this offer notwithstanding that it had been offered the full insured sum of RM55,000 was "due to the wilful delay on the part of defendant company which causes loss to the plaintiff company." The plaintiff wanted to claim losses arising out of the defendant's failure to settle the claim sooner. (See Q&A 77 of the plaintiff's witness statement and defendant's letter dated 13 October 2000 p. 21 of Agreed Bundle B.) B C

[7] The plaintiff proceeded to file this suit on 21 August 2002 after the offer by the defendant to pay the full insured sum of RM55,000. It included in its statement of claim in para. 10 an allegation that the defendant had wilfully and negligently delayed to pay the insured sum and thereby causing it to incur a loss of earning of RM40,000 as at 18 July 2000 and RM17,000 per month from August 2000 onwards. D

[8] The defendant's defence is essentially that whatever claim that the plaintiff can make had to be determined under the policy of insurance. This is stated clearly in endorsement 99 at p. 6 of agreed bundle B which reads: "Notwithstanding anything within mentioned to the contrary, it is hereby agreed that in the event of a total loss, whether actual or constructive to the vehicle insured herein, the liability of the company shall be the insured value or the market value of the vehicle whichever is lower subject to the reduction of any amount which the insured is required to bear under the policy." E F

[9] The defendant had pursuant to this policy offered to pay the plaintiff the full insured sum of RM55,000 and the defendant made the offer as early as 13 October 2000 (eight months after the plaintiff made the claim) after several attempts to settle at a lower sum. Evidence was led by the defendant as to why there was a delay before the final sum was offered by the defendant's claim officer DW2 Abdul Rahim Choo bin Abdullah who testified that before any offer was made the market value of the vehicle insured had to be ascertained. It was initially ascertained as RM46,000 and hence the first offer of RM50,000 was made. The offer was increased to RM52,500 after reviewing the adjuster's report and the final offer of RM55,000 was made purely on commercial consideration. G H I

[10] With respect to the claim of loss of earnings this is clearly too remote to justify a claim in tort.

Decision

[11] It is clear that the plaintiff's claim with respect to the liability of the defendant to pay the insured sum of RM55,000 is a non-issue as by its letter dated 13 October 2000 the defendant had indicated in no uncertain terms that it was prepared to pay this sum. The sum of RM55,000 that the defendant was prepared to pay represents the full sum insured under the policy. This settlement sum was offered to the plaintiff even before it filed this action twenty two months later on 21 August 2002. The plaintiff should therefore be entitled to claim this sum.

[12] With respect to the plaintiff's claim for loss of earnings it is clear that any claim arising out of the use of the insured vehicle BEU 6673 the defendant would only be liable to indemnify the plaintiff under s. 1 para. 1 of the policy which states as follows:

> 1. The company will indemnify the Insured against loss of damage to the Motor Vehicle and its accessories and spare parts whilst thereon
>
> (a) by accidental collision or overturning or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear,
>
> (b) by fire external explosion self-ignition or lightning or burglary housebreaking or theft,
>
> (c) by malicious act,
>
> (d) whilst in transit (including the processes of loading and unloading incidental to such transit) by:
>
> (i) road rail inland waterway lift or elevator
>
> (ii) direct sea route across the straits between the island of Penang and the mainland
>
> (e) by impact damage caused by falling objects provided no convulsion of nature is involved.

[13] It is clear that the policy is essentially a contract of indemnity which binds the defendant insurance company to indemnify the plaintiff for loss occasioned and incurred by the plaintiff only within the provision of s. 1 para. 1 above. Nothing therefore can flow from the consequence of any contumelious delay

on the part of the defendant (even if proved) to settle the plaintiff's claim. In fact the "exceptions to s. 1" in cl. (i) of the policy expressly states that the company shall not be liable to pay for any consequential loss. In any case the time period of some eight months expended by the defendant before offering to settle the full sum was not contumelious - given the fact that the plaintiff's claim in the normal course would have to be adjusted in order to determine the sum that ought to be paid to the plaintiff as explained by the defendant's claims officer, Abdul Rahim Choo bin Abdullah (DW2).

[14] Accordingly the plaintiff's claim for loss suffered in consequence of the late settlement of its claim is disallowed.

[15] The plaintiff should however pay the cost of this action to the defendant to be taxed as it is clear that had it accepted the defendant's final offer to pay the full insured sum under the Policy *vide* its letter dated 13 October 2000 it would not have been necessary for the plaintiff to file this action.